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No. 87-585

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

BURTON D. LINNE, JACK O. SLATER,
and JOHN C. IMLAY IV,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit

PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

Petitioners Burton D. Linne *et alia* hereby reply to the brief in opposition of respondent United States of America.

ARGUMENT

The Department of Justice (DOJ) sets out four contentions, the spuriousness of which points up the crying need for issuance of a writ in this case.

I. False characterization of the question presented.

The issue here is not simply that "Rideoutte's testimony did not completely or accurately reflect all of the information [he] had acquired about the Bullion Fund", but further that that testimony *and prosecutor Conroy's summary of it* presented a picture quite the opposite of what Rideoutte had actually discovered concerning petitioners' roles as "principals" of the Fund. Moreover, the complaint is not simply that, with Rideoutte's report in hand prior to trial, petitioners "could have impeached [his] testimony", but further that that testimony *and Conroy's summary of it* would have been impossible in the teeth of the report—and, indeed, the falsity of the *indictment* would have been apparent, prompting investigation of Grand-Jury abuse, if not dismissal of the prosecution.[1]

Petitioners emphasize *Conroy's summary* and the *indictment* because DOJ mentions them *not all all.* But how could they be other than unmentionable, being undeniable, undefendable, and unpardonable? Yet the very silence that cloaks the covinous Conroy and the illusive indictment bespeaks DOJ's impotence even to color these matters as "legal", let alone to justify them.

In short, its caricature of the question presented evidences DOJ's continuation of the "cover up" at the highest levels.

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[1] *Pace* Brief in Opposition (BO) at 4.

II. Whitewash of Rideoutte's false testimony.

Although close-mouthed about Conroy and the indictment, DOJ waxes fantastic about Rideoutte's testimony.

A. *First*, DOJ says, it was all true.[2] **1.** Were this correct, it would be irrelevant—because, when *Conroy* told the Petit Jury that Rideoutte found only a "mail drop" in the Bahamas and "couldn't find the principals" of the Bullion Fund, and that the jury should infer an "intent to defraud" "through [petitioners'] promotion of the Bullion Fund", *Conroy* was lying.[3]

2. Moreover, it is implausible, because had what Rideoutte told been the *whole* truth, his testimony would have been pointless. *"In support of the allegation that the Bullion Fund was part of petitioners' fraudulent scheme,"* DOJ offers, Rideoutte testified that he "had discovered no evidence that the Bullion Fund was registered (*i.e.*, incorporated) in the Bahamas".[4] That is, the supposed burden of Rideoutte's testimony was the Fund's *formal corporate status in the Bahamas*. How, though, would mere *non*-registration "support" the allegation that the Fund was part of petitioners' "scheme"? Conversely, were the "truth" of Rideoutte's testimony that his truncated investigation in the Bahamas left him unaware of other information elsewhere, his performance was equally meaningless. How could *non*-registration in the Bahamas negate registration in another jurisdiction? No, Rideoutte's testimony was balderdash, *unless* he intended to deceive the Petit Jury into inferring the absence of Bahamian "registration" proved the Bullion Fund a mere "mail drop". And this, of course, is precisely how Conroy—and

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[2] *Id.* at 6: "Nothing in Agent Rideoutte's testimony conflicts with anything in his investigative report."

[3] *Compare* Appendix to Petition at 30a and 33a *with id.* at 10a-12a.

[4] BO at 3 (emphasis supplied).

petitioners' own trial-counsel, too[5]—interpreted Rideoutte's remarks.

3. Even DOJ's pharasaical parsing of the script cannot disguise the duplicity infecting Rideoutte's testimony. At base, DOJ's story is that: (i) Rideoutte's suppressed report contained two sets of facts (Sets A and B, indicating what he did and did not find, respectively); (ii) his testimony related only one set of facts (Set B); yet (iii), notwithstanding its incompleteness, his testimony was "true". Now, even if Set A, viewed in isolation, might arguably support the notion that petitioners were the "principals" of the Bullion Fund, Set B utterly demolishes this idea. But, knowing of the theory the prosecution intended to offer the Petit Jury under color of Set A, and aware that Set B macerated this theory, nevertheless Rideoutte artfully confined his testimony to Set A. *This*, DOJ pretends, is "telling the truth"! In fact—and certainly in the intentions of Rideoutte, Blondin, and Conroy—it amounted to barefaced lies by necessary implication.[6]

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[5] *See* Petition at 13-14.

[6] For example, DOJ applauds how "[i]n both [his report and his testimony Rideoutte] noted that the Bullion Fund was not registered (*i.e.*, incorporated) in the Bahamas". BO at 7. Yet his report identified the circumstances of the Fund's incorporation. Thus, as the Petit Jury heard the testimony—being, with petitioners, deprived of the report—Rideoutte actually said: "I could find *no* evidence of corporate registration *anywhere*." Which was a lie.

Again, smiles DOJ, "[t]he report stated, as Agent Rideoutte had testified, that the telephone company and the post office showed no record" of the Fund. *Id.* at 6. Yet his report identified as holder of the telephone and postal box Anthony Thompson, who knew—and told Rideoutte—everything about the Fund. Thus, as the Petit Jury heard the testimony, Rideoutte actually said: "I could discover *no* link between the telephone and post-office box and the Bullion Fund." Which was another lie.

And again, DOJ purrs, "[i]n both [the report and his testimony, Rideoutte] reported learning nothing about the Bullion Fund from

4. But petitioners need not rest on implications to expose both Rideoutte's perjury and DOJ's moral obtuseness. DOJ claims Rideoutte properly testified that the Bahamian police "had no record" of the Bullion Fund.[7] Bunk. The police discussed with Rideoutte the status of Gordon Briggs, true principal of the Fund. The ones they had "never heard of" were *petitioners*![8] Similarly, DOJ contends "the affidavits [petitioners submitted below] do not in any way rebut Agent Rideoutte's statement that he found no records" of corporate registration for the Fund in the Bahamas.[9] Yet the affidavit of the undersigned counsel recounts how Thompson described registering the Fund with the Central Bank (records of which Rideoutte purloined) and obtaining a business-license for it in the Bahamas.[10]

5. Adding insult to injury, DOJ postures that Rideoutte did not "discuss in his testimony the contents of his interview with * * * Thompson * * * because Rideoutte's account of Thompson's statements would have been hearsay".[11] Oh, true and faithful public servant, punctilious and chary of transgressing the minutest evidentiary rule! Oh, evasive viper—what other than the rankest hearsay

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sources such as the police files, the chamber of commerce, the telephone company, and the post office". *Id.* at 7. Yet, in both his report and testimony Rideoutte referred to contacts with the Central Bank of the Bahamas—*refraining in his testimony*, however, from describing the information he obtained, *much of it illegally*, including "every copy of every bank deposit that went into [the Bullion Fund's] bank accounts in Nassau". *See* Petition at 15, and Appendix to Petition at 12a. Thus, as the Petit Jury heard the testimony, Rideoutte actually said: "The Central Bank never heard of the Bullion Fund." Which was yet a third lie.

[7] BO at 6.

[8] *Contrast* Appendix to Petition at 10a *with id.* at 15a-16a.

[9] BO at 8-9.

[10] Petition at 16.

[11] BO at 7.

was that the Bahamian police, chamber of commerce, and so on supposedly confided in you?!

But, offers DOJ, had Rideoutte related "what Thompson told him, it would hardly have helped petitioners".[12] No? Could Thompson's *denial* that petitioners were the principals of the Bullion Fund have *hurt* them, when that very proposition Conroy was intent on "proving" to the Petit Jury through the lie that Rideoutte "couldn't find the principals"?[13]

In sum, DOJ's screed that Rideoutte told the "truth" may qualify its authors for professorates of evidence at the Pontius Pilate School of Law—but as a basis for denial of this petition it is an intellectual and moral abyss.

B. *Second*, DOJ contends, true or not Rideoutte's testimony was insignificant:

> whether the Bullion Fund was registered in the Bahamas was not of great importance; what was important was that petitioners promoted the Bullion Fund as a legal means * * *, when in fact [it] was simply a means of generating large amounts of cash for petitioners * * *.[14]

However, the thrust of Rideoutte's testimony was not "registration" *vel non*, but existence of the Fund independent of petitioners. Through Rideoutte's "unsuccessful" investigation the prosecutors "proved" the Fund simply petitioners' "mail drop"—and *this* phoney "proof" deceived the Petit Jury into concluding petitioners operated the Fund with knowledge of its illegality.[15]

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[12] *Id.*

[13] Appendix to Petition at 33a.

[14] BO at 9 (footnote omitted).

[15] DOJ may pretend that "the government's evidence * * * showed that the Bullion Fund was not a legitimate investment company"; but no such "evidence", outside of Conroy's deceitful "mail-drop" theory, ever entered the record. *Pace* BO at 10.

Inconsistently, DOJ admits "the Bullion Fund was obviously an important feature of the case". True, as DOJ adds, "the significance of the [Fund] * * * did not turn" on its mere Bahamian corporate status, "which was the only issue addressed" in Rideoutte's testimony.[16] But the prominence of his testimony lies in its uniqueness as the source for Conroy's "mail-drop" canard, which in turn Conroy advanced to conjure up petitioners' "intent to defraud". So, if the Fund itself "was *obviously* an important part of the case", to like degree was Rideoutte's testimony.

Amazingly, though, DOJ then asserts that Rideoutte's failure to discover anyone in the Bahamas who

> knew anything about petitioners * * * was not exculpatory or in any way inconsistent with either [his] testimony or the rest of the government's proof.[17]

Well, *Conroy and Blondin* did not think the truth of the matter consistent with "the rest of [their] case", or "unimportant" as exculpatory evidence. For they systematically suppressed Rideoutte's report and rigged his testimony so that Conroy could later orate that "Mr. Rideoutte couldn't find the principals [of the Bullion Fund]", and importune the Petit Jury to conclude from this that the Fund was petitioners' "mail drop" and their involvement with it "proof" of their "intent to defraud".

C. *Third*, DOJ retreats to the defense that, in any event, the prosecutors elicited evidence other than Rideoutte's testimony.[18] At issue, however, is not whether the jury might have convicted petitioners on *other* (arguably sufficient) evidence, viewed in isolation from the tainted Bul-

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[16] BO at 9 n.5.

[17] *Id.* at 10.

[18] *Id.* at 10-11.

lion-Fund "proof", but whether *that* fraudulent "evidence", and Conroy's venomous argument dilating on it, could *not* have contributed to the verdict *beyond a reasonable doubt*.[19] And nowhere does DOJ even attempt to satisfy this strict standard.

III. Reliance on the success of Rideoutte's fraud to defeat petitioners' Jencks-Act claim.

Because, pretends DOJ,

> there is no support in the record for petitioners' claim that Rideoutte perjured himself * * *, [they] are wrong in asserting * * * that their waiver [of their Jencks-Act right to receive the report] was fraudulently induced.[20]

Now, Rideoutte's false testimony—and particularly Conroy's unconscionable use of it—cannot be gainsaid so easily. But even were these matters debatable, the purported "waiver" of petitioners' Jencks-Act rights would be inadmissible. For the Jencks Act must be strictly construed, and violations thereof "excused only in extraordinary circumstances" where "it is perfectly clear that the defense was not prejudiced".[21] Thus, if there is *any* likelihood petitioners were fraudulently induced—by Rideoutte's testimony, Blondin's characterization of it, and the prosecutors' refusal to satisfy their *pre*-trial duties of disclosure—to "waive" their Jencks-Act rights at trial, that "waiver" must be set aside.

IV. Use of the deception of the Petit Jury to excuse denying investigation of Grand-Jury abuse.

Finally, DOJ opposes inquiry into abuse of the Grand

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[19] Chapman v. California, 386 U.S. 18, 22-24 (1967).

[20] BO at 11.

[21] Goldberg v. United States, 425 U.S. 94, 111 n.21 (1976); United States v. Missler, 414 F.2d 1293, 1303-04 (4th Cir. 1969); United States v. Crowell, 586 F.2d 1020, 1028 (4th Cir. 1978).

Jury for three reasons.[22]

A. *First*, complains DOJ, "this contention was raised too late in the court of appeals". In fact, petitioners broached it *as soon as possible*: immediately after they received the Rideoutte report, on the day of oral argument in that court. Only then did they have hard evidence, in the contents and date of the report, that the indictment was fabricated and therefore that the Grand Jury must have been affirmatively deceived.

B. *Second*, fantasizes DOJ,

> [t]here is no foundation * * * for petitioners' claim * * * that the activities of [Blondin, Conroy, and Rideoutte] before the Grand Jury were part of a continuing conspiracy. Nor have petitioners even made a threshold showing of why they should be permitted to examine portions of the grand jury record not already provided to them.

"No foundation"?! The indictment itself, together with the materials connected with the "letters rogatory", prove that someone defrauded the Grand Jury with Conroy's phoney "the-Bullion-Fund-is-only-a-mail-drop" theory.[23] These documents establish, beyond peradventure, that the prosecutors: (i) suppressed Rideoutte's report; and (ii) presented the Grand Jury with testimony, documents, or both inconsistent with the report—and, therefore, *false*.

C. *Third*, pleads DOJ, "the petit jury's verdict renders any [Grand-Jury] error harmless". Where, as here, systematic violations of the Constitution impermissibly infect the framing of the indicment and, consequently, the very existence, nature, and outcome of the trial-proceedings,

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[22] BO at 12.

[23] *See* Petition at 7.

this argument is bootless.[24] *But for* the abuse of the Grand Jury by the fraudulent Bullion-Fund theory *there would have been no indictment* (as the prosecutors themselves admitted); and *but for* the faked Bullion-Fund allegations in the indictment Rideoutte's mendacious testimony and the perfidious pyrotechnics of Conroy's summary would have been impossible, too.[25] Thus, rather than "curing" the Grand-Jury abuse, the Petit Jury's mistaken verdict was the intended result, and very fulfillment, of it.

CONCLUSION

DOJ's opposition is a sham. For even its lawyers know that the "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice' ".[26] Yet they persist in victimizing petitioners, in service of what hidden ends inimical to the Constitution one shudders to contemplate. The dark and twisted souls of these conscienceless *fonctionnaires* need our prayers—but, even more urgently, a stinging rebuke from this Court. Let the writ be issued.

Respectfully submitted,

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[24] *Cf.* Vasquez v. Hillery, 474 U.S. ____, ____, 106 S.Ct. 617, 623 (1986).

[25] *See* Petition at 7.

[26] Giglio v. United States, 405 U.S. 150, 153 (1972).